THE HON'BLE MR JUSTICE V.V.S.RAO

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WRIT PETITION No.22520 of 2005

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Dated:24.10.2005

Between:

Kurakalu Dasu, S/o. Late Suryanarayana
R/o. Peddipalem Village, Anandapuram Mandal,
Vishakapatnam, and others.

..... PETITIONERS

AND

The Joint Collector, Vishapatnam, and others.

.....RESPONDENTS

THE HON'BLE MR JUSTICE V.V.S.RAO

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WRIT PETITION No.22520 of 2005

ORDER:

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The petitioners are aggrieved by the proceedings dated 20.08.2005 of the first respondent herein in exercise of powers under Section 9 of the A.P.Rights in Land & Pattadar Pass Books Act, 1971 (for short 'the Act'). They seek a writ of Mandamus declaring the said impugned proceedings as illegal and arbitrary, and for a consequential order to set aside the same.

The petitioners' grandfather allegedly purchased the land admeasuring Acs.2.70 cents in Survey No.128/4 of Peddipalam Village, Anandapuram Mandal, Vishakapatnam District, in 1912. The petitioners herein succeeded the property and are allegedly in possession of the property. They also obtained pattadar passbooks and title deeds in 1996 under the provisions of the Act, and in 2002, they were also paid compensation by the National Highways Authority when a portion of the land was acquired for widening National Highway No.5.

The fourth respondent herein appears to have filed an appeal before the second respondent challenging the action of the Mandal Revenue Officer in issuing pattadar passbooks to the petitioners in respect of the land in Survey No.128/4. The second respondent issued notice to the petitioners and they were represented by a lawyer before the second respondent. After conducting enquiry and hearing the appeal, the second respondent by proceedings dated 10.02.2005 cancelled the pattadar passbooks and title deeds issued in favour of the petitioners and remanded the matter to the third respondent i.e., the Mandal Revenue Officer, for a fresh consideration for issue of pattadar passbooks and title deeds to the persons having title and right of ownership. Aggrieved by the proceedings of the second respondent, the petitioners herein preferred a revision petition under Section 9 of the Act before the first respondent, who rejected the revision, and further directed the Mandal Revenue Officer to issue pattadar passbooks to the rightful owners.

The learned Counsel for the petitioners, Sri A.Sudershan Reddy, submits that it was not proper for the appellate authority to entertain the appeal filed by the contesting respondents after a lapse of seven years and that before issuing pattadar passbooks and title deeds, the third respondent conducted proper enquiry, and therefore, there was no necessity for respondents 1 and 2 to remand the matter to the Mandal Revenue Officer for fresh enquiry. He also strenuously contends that the petitioners' grandfather purchased the property in 1912, and the contesting respondents have no manner of right to assail the pattadar passbooks issued to the petitioners.

While opposing the Writ Petition, the learned Assistant Government Pleader for Revenue (General) on instructions submits that pursuant to the orders of respondent No.2, the Mandal Revenue Officer has initiated fresh enquiry and also invited objections from the petitioners and that the enquiry is pending. Be that as it is, the revisional authority as well as the appellate authority cancelled the pattadar passbooks and title deeds issued to the petitioners, *inter alia,* on the ground that the Mandal Revenue Officer did not conduct proper enquiry and also on the ground that mere possession of the lands does not confer the right of ownership over it. The appellate authority has also recorded a finding that the petitioners herein are not pattadars and that they failed to establish their title and rightful ownership to the lands. Whether the petitioners are rightful owners and they have valid title, is a matter, which has to be enquired into in accordance with law by the Mandal Revenue Officer at the time of conducting enquiry under the provisions of the Act. By cancelling the pattadar passbooks issued to the petitioners, the Revenue Divisional Officer and the Joint Collector have not decided this matter, and therefore, it is open to the petitioners to appear before the Mandal Revenue Officer and file their objections at the time of enquiry. It is also open to the petitioners to file appropriate suit for establishment of their alleged better title, in which event, the declaration of the Civil Court would bind the authorities under the provisions of the Act. Therefore, this Court is not inclined to interfere in the matter, especially when the appellate authority and the revisional authority have only remanded the matter to the Mandal Revenue Officer.

The petitioners are given liberty to approach the Mandal Revenue Officer and place all the material in proof of their title and rightful ownership. As and when the

petitioners submit their representation, the Mandal Revenue Officer shall dispose of the matter within a period of eight weeks from the date of submission of the representation.

The Writ Petition, with the above observations, is accordingly disposed of. No costs.

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(V.V.S.RAO, J)

24.10.2005

vs